IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4099 of 2007(A)

CC.403/2000 of J.M.F.C.,CHAVAKKAD

.....

(CRIME NO.60/2000 OF PAVARATTY POLICE STATION)

PETITIONER : 1ST ACCUSED:

ABDULKHADER, S/O.ABDULKARIM,
PULICHARAM VEETTIL, VENMENAD DESOM, PAVARATTY VILLAGE.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT AND STATE:

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1. THE SUB INSPECTOR OF POLICE, PAVARATTY.

2. STATE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI. P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 4099 Of 2007

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Dated this the 6th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a prosecution for offences punishable, interlia, under section 498A IPC. He is the husband of the defacto complainant. The co-accused have already been tried, found not guilty and acquitted. The petitioner was not available for trial. Therefore the case against him was split up and transferred to the list of long pending cases. According to the petitioner he is innocent. His absence earlier was not wilfull, it is submitted. He is willing to surrender before the learned Magistrate and cooperate for the expeditious disposal of the case. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate, in accordance with law and expeditiously. He therefore prays that a direction may be issued under sections 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons

must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE